

**United States Department of Labor
Employees' Compensation Appeals Board**

F.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 13-790
Issued: July 15, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 19, 2013 appellant, through her attorney, filed a timely appeal of a January 25, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration without further merit review. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this decision. Because more than 180 days elapsed from September 30, 2011, the date of the most recent merit decision, to the filing of this appeal, the Board lacks jurisdiction to review the merits of the case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board. By decision dated September 30, 2011, the Board affirmed OWCP's July 22, 2010 denial of appellant's occupational disease claim on the basis that the medical evidence did not sufficiently establish that the accepted work activity,

¹ 5 U.S.C. § 8101 *et seq.*

namely, carrying mail, packages, and magazines and performing other duties involving bending, twisting and climbing stairs, caused or contributed to a lower back and leg condition.² Following this decision, counsel filed a written request for reconsideration to OWCP on July 20, 2012 and submitted new evidence.

In a February 20, 2012 report, Dr. Roseanna M. Lechner, a Board-certified neurosurgeon, related that appellant was being chased by a dog sometime in November 2008 when she fell and injured her left leg. Thereafter, she experienced back and bilateral leg pain. Magnetic resonance imaging (MRI) scans obtained on February 6 and September 18, 2009 exhibited L4-L5 disc bulge, spondylolisthesis and facet joint disorder. Dr. Lechner concluded:

“It is my opinion, with a reasonable degree of medical certainty, that the continued stress of [appellant] carrying her mailbag, climbing up and down steps, lifting packages that could weigh up to 60 pounds and repeatedly bending and twisting caused progressive disruption of the disc and facet joints at L4-L5 which was already weakened from the initial fall in November 2008 resulting in instability and chronic back and leg pain.”³

By decision dated January 25, 2013, OWCP denied appellant’s request on the grounds that it did not receive new and relevant evidence warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP’s regulations provide that the evidence or argument submitted by a claimant must either: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

By decision dated September 30, 2011 decision, the Board affirmed denial of appellant’s occupational disease claim, finding the medical evidence insufficient to establish that her federal employment caused or contributed to a lower back and leg condition. On July 20, 2010 counsel requested reconsideration and submitted a February 20, 2012 report from Dr. Lechner. OWCP subsequently denied the request on January 25, 2013 on the grounds that it did not receive new and relevant evidence warranting further merit review.

² Docket No. 10-2183 (issued September 30, 2011). The findings contained in the Board’s prior decision are incorporated by reference.

³ Dr. Lechner incorporated the content of earlier reports dated October 23 and December 18, 2009, both of which are in the case record and were previously considered by OWCP. *See id.*

⁴ 5 U.S.C. § 8128(a).

⁵ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

⁶ *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. While her application for reconsideration included Dr. Lechner's February 20, 2012 report, OWCP had already considered Dr. Lechner's October 23 and December 18, 2009 reports presenting identical findings and conclusions.⁷ The submission of evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁸ Furthermore, appellant did not assert that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. Because she failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

Counsel argues on appeal that the January 25, 2013 decision was contrary to fact and law. As noted, appellant did not offer a valid legal contention or pertinent evidence not previously considered by OWCP. Therefore, OWCP properly denied the request for reconsideration.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 15, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁷ See *supra* note 3.

⁸ Edward W. Malaniak, 51 ECAB 279 (2000).